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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 HP TUNERS, LLC,

9 Plaintiff,

10 v.

11 KEVIN SYKES-BONNETT, et al.,

12 Defendants.

CASE NO. C17-5760 BHS

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO
SUPPLEMENT, STRIKING
PRETRIAL CONFERENCE AND
TRIAL DATE, AND REQUESTING
JOINT STATUS REPORT

13 This matter comes before the Court on Plaintiff HP Tuners, LLC's ("HP Tuners")
14 motion for leave to supplement, Dkt. 203, and review of the Court's calendar.

15 On July 31, 2019, Defendants Syked ECU Tuning Incorporated ("Syked"), Kevin
16 Sykes-Bonnett ("Sykes-Bonnett"), and John Martinson ("Martinson") (collectively
17 "Defendants") filed a motion to for summary judgment on all claims against Martinson in
18 his individual capacity. Dkt. 183. On September 18, 2019, HP Tuners filed a motion for
19 leave to file a supplemental response and supplemental evidence. Dkt. 203. HP Tuners,
20 however, failed to file the evidence and states that it will be filed if its motion is granted.
21 Dkt. 203-2 at 2 n.1. While there is some dispute regarding when HP Tuners had access to
22 the evidence, the Court finds that Defendants will not be prejudiced if the Court considers

1 the additional evidence. Therefore, the Court grants HP Tuners' motion. HP Tuners
2 shall file the supplemental evidence no later than October 14, 2019. Defendants may file
3 a supplemental reply brief no later than October 18, 2019. The Clerk shall renote
4 Defendants' motion for summary judgment for consideration on the Court's October 18,
5 2019 calendar.

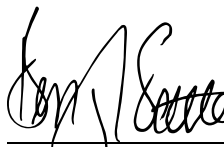
6 In its previous order, the Court informed the parties that there was another civil
7 case set for trial on October 29, 2019. Since then, the Court has been informed that a
8 criminal trial set for that same day will be going to trial. Criminal trials take precedence
9 over civil trials and therefore the Court strikes the pretrial conference and trial date in this
10 matter. While the Court would normally set this trial for the next available trial date,
11 review of the parties' trial briefs establishes issues that need to be resolved before this
12 matter should proceed to trial.

13 The parties seem to agree that there are three types of claims in this matter.
14 Sykes-Bonnett concedes liability for improperly distributing keys to and "hacking" HP
15 Tuners's products. Dkt. 223 at 3–4. The remaining issue for these claims is damages.
16 *Id.* The third type of claim is based on HP Tuners's allegations that Defendants copied or
17 incorporated HP Tuners's trade secrets into Syked's software. In the order denying
18 Defendants' motion for partial summary judgment, the Court identified one allegation of
19 copying in HP Tuners's complaint and two specific files in HP Tuners's expert report.
20 Dkt. 212 at 10. Now, in its trial brief, HP Tuners, relying on the same expert report,
21 repeats the same high-level general accusations that Defendants copied HP Tuners's trade
22 secrets without specifically identifying what trade secrets were copied. Dkt. 217 at 15–

1 16. These accusations lack sufficient detail to put Defendants on notice of what was
2 copied or convince the Court that there is a concrete dispute for trial. In other words, an
3 expert's vague opinion that "some portions" of code are similar is not admissible
4 evidence to support a claim for trade secret misappropriation. So far, the only specific
5 copying evidence the Court will allow are the two files identified in the Court's order,
6 which are ("HPT00021A") and ("HPT00021B"). Dkt. 212 at 10 (citing Dkt. 132-2, ¶
7 31). If HP Tuners intends to submit any additional evidence of copying, it must disclose
8 to Defendants and the Court exactly what secrets were copied.

9 In sum, HP Tuners seems to request a trial on damages, which Sykes-Bonnett
10 asserts he has limited means to pay, Dkt. 223 at 3, and on liability for non-specific trade
11 secret copying. The Court tends to agree with Defendants that trial seems either
12 unnecessary or limited to a few discrete issues. Dkt. 223 at 10 ("Why a five-day jury trial
13 in federal court is needed to address two minor references to non-secret code *that no*
14 *longer appear* in the Syked ECU Tuning software and that *never caused any harm*
15 *whatsoever*, has not been explained."). The parties' pretrial order, which is due
16 tomorrow, may shed some light on these issues. Regardless, the parties shall work with
17 the Court's clerk to find a new trial date and then submit a joint status report requesting
18 that trial be set for that date.

19 Dated this 9th day of October, 2019.

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22 BENJAMIN H. SETTLE
United States District Judge